

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 40/2024

IN THE MATTER OF:

Balwinder Kaur

.... Applicant

Versus

State of Punjab & Ors..

.... Respondents

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NDOH- 29.08.2024

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RESPONDENT NO.3

THROUGH



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Date: 13.08.2024

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO.40 OF 2024

IN THE MATTER OF:

Balwinder Kaur

...Applicant

Versus

State of Punjab & Ors.

...Respondents

**REPLY ON BEHALF OF RESPONDENT NO.3/NHAI TO THE JOINT
COMMITTEE REPORT DATED 20.05.2024**

MOST RESPECTFULLY SHOWETH:

1. The present reply is being filed by the Answering Respondent/NHAI in compliance with the Order dated 23.07.2024 passed by this Hon'ble Tribunal, to the Report dated 20.05.2024 filed by the Joint Committee.
2. That this Hon'ble Tribunal vide Order dated 09.04.2024 had constituted a Joint Committee comprising of the Punjab Pollution Control Board and Ld. District Magistrate, Ropar to undertake the site visit and look into the grievance raised by the Applicant in the present OA regarding illegal mining.
3. That on 23.04.2024, the Joint Committee visited the site and filed its report dated 20.05.2024 before this Hon'ble Tribunal. In the report, the Joint Committee concluded that M/s Ceigall India has grossly violated the permission given by the Mining Department by extracting more material against the permissible quantity.


परियोजना निदेशक
Project Director
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highways Authority of India
परियोजना कार्यान्वयन इकाई-चण्डीगढ़
Project Implementation Unit-Chandigarh

4. That the matter was listed for hearing on 22.05.2024, when this Hon'ble Tribunal impleaded the Answering Respondent on the basis of the aforesaid Report filed by the Joint Committee wherein it was observed that the complainant raised *the issue regarding adverse impact of mining on to their land holding and informed that earth mining upto 15-20 feet has been carried out by M/s Ceigall India i.e. company hired by NHAI for extraction of minor minerals for construction of highway.* The Hon'ble Tribunal also directed the Answering Respondent to file the response to the Joint Committee Report.
5. It is respectfully submitted that the Answering Respondent has no direct role regarding the illegal mining being done by M/s Ceigall India Ltd. who, in fact, is the Sub-contractor engaged by the "Concessionaire" namely M/s IRCON International Limited. It is clarified that the Answering Respondent has entered into a Concession Agreement ("CA") with the Concessionaire for construction of the Project Highway.
6. As per the provision of Concession Agreement, it is the responsibility of Concessionaire to procure all the raw material for construction of Project Highway by applying all the applicable permits. The role of Answering Respondent is limited upto the supervision of the work being done in acquired Right of Way (ROW) through the Independent Engineer i.e. M/s Upham International Corporation. It is the Concessionaire who approaches the mining department for obtaining the permits and thereafter the mining department oversees the excavation being carried out. The role of Answering Respondent is limited to oversee the quality/consumption of the soil for ROW. It is relevant to mention that the excessive extraction of soil at borrow areas which was done by M/s Ceigall/Sub-contractor was far away from the ROW acquired by NHAI. Hence, NHAI has no direct role in the illegal mining activity.

7. It is, therefore, submitted that the Answering Respondent has been wrongly impleaded before this Hon'ble Tribunal as detailed in the following factual matrix-

7.1. On 22.12.2021, the Answering Respondent issued Letter of Award to the Concessionaire for construction of four/six lane green field Ludhiana – Rupnagar National Highway No. 205K from junction with NE-5 Village near Mannewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana Bypass near under Bharatmala Pariyojana in the State of Punjab on hybrid annuity mode – Package 3.

7.2. On 25.03.2022, CA was executed between the Answering Respondent and the Concessionaire. True copy of the relevant clauses of the CA is annexed herewith and marked as **Annexure R3/1**. As per the CA, the obligations of the Answering Respondent are as under-

- i. Clause 4.1.2 (b) of CA casts an obligation upon the Answering Respondent to procure all Applicable Permits relating to environmental protection, and conservation in respect of land forming part of the Right of Way under Clause 10.3.1 and 10.3.2
- ii. Clause 4.1.2 (c) of CA casts an obligation upon the Answering Respondent to procure forest clearance for and in respect of land forming part of the Right of Way under Clause 10.3.1 and 10.3.2, save and except permission for cutting trees.
- iii. Clause 6.1.2 of CA casts an obligation upon the Answering Respondent to only provide reasonable support and assistance to the Concessionaire in procuring the Applicable Permits.

7.3. As per Article 5 of CA, the obligation of the Concessionaire are specified as under-

Project Director
National Highways Authority of India
Bharatmala Pariyojana कार्यालयन नई-चण्डीगढ़
Project Implementation Unit-Chandigarh

- i. As per Clause 5.1.2, the Concessionaire has to comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under the Agreement, as extracted below:

“5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.”

- ii. Clause 5.1.4 of CA also casts obligation on the Concessionaire as stated below-

“5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;

...

(f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;”

7.4. On 06.06.2022, the Answering Respondent obtained the Environmental Clearance and subsequently, on 27.01.2023, the Answering Respondent obtained the Diversion of Forest Land as per its obligations under the CA.

7.5. Thereafter, the Concessionaire appointed M/s Ceigall India Limited as its Subcontractor and executed another Agreement dated 04.08.2022 with the Subcontractor. It is pertinent to mention that the Answering

Respondent is not a party to the Agreement executed between the Concessionaire and the Subcontractor.

- 7.6. It is submitted that since the Subcontractor extracted material above the permissible quantity, the Drainage-Cum-Mining and Geology Division, issued 3 Demand Notices dated 03.10.2023 upon the Subcontractor and directed them to pay a sum of Rs.62,75,016/-. The Answering Respondent learnt that the said amount has been deposited by the Subcontractor as also noted in the Report of the Joint Committee.
- 7.7. Clause 36.2 of CA also states that NHAI is indemnified against any illegal act or non-compliance of any applicable Law or Permit by the Concessionaire or its Sub-Contractor.
8. It is, therefore, submitted that the Answering Respondent cannot be made liable for any violation by the Subcontractor. Moreover, it is the obligation of the Concessionaire as per CA to obtain the applicable permits, for which the Concessionaire executed another Agreement with the Subcontractor. Hence, the Answering Respondent is not responsible in any manner for the violation committed by the Subcontractor in extracting excess material than the permissible limit in the area outside the ROW of the project.
9. That the Joint Committee in its Report dated 20.05.2024 has also concluded that M/s Ceigall India has grossly violated the permission given by the Mining Department by extracting more material against the permissible quantity. The report does not even state or suggest any default by the Answering Respondent which has caused damage to the environment. The default is only on the part of the Subcontractor for which fine has already been imposed by the Mining Department on the

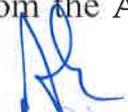
Subcontractor, and that the Answering Respondent has no role or any liability towards the same.

PARAWISE REPLY

- 1-3. Contents of paras 1-3 of the report are matter of record, hence needs no response.
4. Contents of para 4 of the report which are matter of record need no reply. The remaining observations are denied as false. It is specifically denied that M/s Ceigall India i.e. company hired by NHAI for extraction of minor minerals for construction of highway. It is reiterated that the Answering Respondent executed the Concession Agreement dated 25.03.2022 with the Concessionaire for the present project. Thereafter, the Concessionaire engaged and executed another Agreement dated 04.08.2022 with the Subcontractor to which the Answering Respondent is not a party.
- 5-9. Contents of paras 5-9 of the report are matter of record, hence needs no response. In response to the conclusion of the Joint Committee Report, it is submitted that the said report nowhere holds the Answering Respondent responsible in any manner for illegal mining. On the contrary, the report categorically holds that it was M/s Ciegall India Ltd Company who has grossly violated the permission given by the Mining Department by extracting more material against the permissible quantity. Moreover, the Joint Committee has also observed that there has been no damage to any kind of forest property/trees.
10. The Answering Respondent further reserves its right to file additional reply/objection, if required, with the permission of the Hon'ble Tribunal.

परियोजना निदेशक
Project Director
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highway Authority of India
परियोजना कार्यान्वयन इकाई-चण्डीगढ़
Project Implementation Unit-Chandigarh

11. Therefore, the Answering humbly submits before this Hon'ble Tribunal that the Answering Respondent has wrongly been impleaded as a party to the present proceedings and hence, should be deleted from the Array of Parties in the present original application.


RESPONDENT NO.3

Project Director
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highways Authority of India

THROUGH

Madhu Arora

सिंघानिया & पार्टनर्स एलएलपी
Project Implementation Unit, Chandigarh
Singhania & Partners LLP
Solicitors & Advocates

Dated: 13.08.2024
Place: New Delhi

P-24, Green Park Extension
New Delhi-110016

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

ORIGINAL APPLICATION NO.40 OF 2024

In the matter of:

Balwinder Kaur

...Applicant

Versus

State of Punjab & Ors.

...Respondents

AFFIDAVIT

I, Pardeep Atri, son of Sh. Sewa Ram Atri, aged 46 years, working as Project Director at National Highways Authority of India, having office at Panchkula, presently at Panchkula, do hereby on solemn affirmation state and submit as under:

1. I say that I am the authorized representative of the Respondent No.3 abovenamed and as such am conversant with the facts and circumstances of the present reply. I have been duly authorized by the Respondent No.3 to initiate and pursue the present proceedings for and on behalf of the Respondent No.3 and hence, I am competent to swear the present affidavit on the basis of the records being maintained by the Respondent No.3 in the ordinary course of its business.
2. I say that the accompanying reply to the Joint Committee Report Dated 20.05.2024 has been drafted by my counsel on my instructions and I have read and understood the contents of the same. The contents of the reply are true and correct, which are reiterated herein and are not being repeated for the sake of brevity.



परियोजना कार्यालय
Project Director
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highways Authority of India
परियोजना कार्यालय इकाई-चण्डीगढ़
Project Implementation Unit-Chandigarh

3. I say that the annexures filed along with the present reply are true copies of their respective originals.

ATTESTED
(FAQIR CHAND)
OATH COMMISSIONER
PANCHKULA (HRY)

परियोजना निदेशक
Project Director
DEPONENT
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highways Authority of India
परियोजना कार्यान्वयन इकाई-चण्डीगढ़
Project Implementation Unit-Chandigarh

VERIFICATION:

Verified at Panchkula this ____ day of August, 2024 that the contents of the above affidavit are true and correct to the best of my knowledge. No part of it is wrong and nothing material has concealed therefrom.

5958



Certified that the aforesaid statement has been made before me on OATHS A on 13.8.24 at Panchkula by S/o Sh. Hardeep Singh who is identified in 5958.
OATH COMMISSIONER PANCHKULA (HRY)

परियोजना निदेशक
Project Director
DEPONENT
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
National Highways Authority of India
परियोजना कार्यान्वयन इकाई-चण्डीगढ़
Project Implementation Unit-Chandigarh

13 AUG 2024



NATIONAL HIGHWAYS AUTHORITY OF INDIA

(Ministry of Road Transport & Highways)

Government of India

Construction of Four/Six lane Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana in the State of Punjab on Hybrid Annuity Mode: Package-3 (Design Ch. 66.440 to Design Ch. 90.500 and spur to Kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km)

CONCESSION AGREEMENT

BETWEEN

NATIONAL HIGHWAYS AUTHORITY OF INDIA

G-5 & 6, Sector-10, Dwarka, New Delhi -110 075

AND

M/S IRCON LUDHIANA RUPNAGAR HIGHWAY LIMITED

**C-4, District Centre, Saket,
South West Delhi, Delhi - 110017**

25th March, 2022

(Volume – I)

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WHEREAS:

- (A) The Government of India had entrusted to the Authority the development, maintenance and management of National Highway No. 205K including the section from km 66+440 to 90+500 and Spur to Kharar from km 0+000 to km 19+200. The authority had resolved to Construct Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near to Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana: Package-3 (Design Ch. 66.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km) in the State of Punjab by Four/Six-Laning thereof (the “Project”) on design, build, operate and transfer (the “DBOT Annuity” or “Hybrid Annuity”) basis, which shall be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by the Authority, in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (B) The Authority had adopted a single stage two envelope bidding process and accordingly invited proposals by its Request for Proposals dated 22.10.2021 (the “Request for Proposals” or “RFP”) for qualification and short listing of bidders for construction, operation and maintenance of the above referred Project on Hybrid Annuity basis.
- (C) The Authority had prescribed the technical and commercial terms and conditions in the RFP, and invited bids comprising technical and financial bids from the bidders for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had technically qualified certain bidders including, *inter alia*, the selected bidder comprising IRCON International Limited and accepted the financial bid of the selected bidder and issued its Letter of Award No. NHAI/35055/1/2021/PB/LRK&LB/PKG-3/R/PB-595 dated 22.12.2021 (hereinafter called the “LOA”) to the selected bidder requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty five) days of the date of issue thereof.
- (E) The selected bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- (F) By its letter dated 24.01.2022, the Concessionaire has also joined in the said request of the selected bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.
- (G) The Authority has agreed to the said request of the selected bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on Hybrid Annuity basis, subject to and on the terms and conditions set forth hereinafter.



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US



NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN

SIGNED, SEALED AND DELIVERED For and on behalf of THE Concessionaire by:
and on behalf of THE AUTHORITY by:


Akhil Khare 25/3/2022
Chief General Manager (T)
National Highways Authority of India
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075


Shri. Masood Ahmad
Director
IRCON LUDHIANA RUPNAGAR Highway Limited
RUPNAGAR
C-4, District Centre, Saket, New Delhi-
110017, India
Director/Authorised Signatory

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the 24th day of December, 2021 hereunto affixed in the presence of Sh. Masood Ahmad, Director who has signed these Presents in token thereof and, Sh. B Mugunthan, Director who has countersigned the same in token thereof:

In the presence of:

1. 
Manoj Kumar
Member (P)

2. 
Sachin Kumar
Dy. Manager (P)
NHAI HQ.

In the presence of:

1. 
Md. Haseeb Anwar
GM/Civil
IRCON

2. 
(S. VAIRAVAN)
DGM/CIVIL/BD
IRCON.

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PUBLIC PRIVATE PARTNERSHIP IN HYBRID ANNUITY PROJECTS

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 22, 28,38 and 41, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days thereafter. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
- (b) procured all Applicable Permits relating to environmental protection, and conservation in respect land forming part of the Right of Way under Clause 10.3.1 and 10.3.2;
- (c) procured forest clearance for and in respect land forming part of the Right of Way under Clause 10.3.1 and 10.3.2, save and except permission for cutting trees; and
- (d) procured approval of the General Arrangement Drawings for the road over bridges/under bridges at level crossings on the Project.

Provided that the Authority shall be entitled to an additional period, not exceeding 90(ninety) days beyond the period of 150 days without being liable for payment of any damages, for fulfillment of the Conditions Precedent set forth in this Clause.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 150(one hundred and fifty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority in terms of Clause 9.1 of this Agreement. For the avoidance of doubt it is clarified and agreed that the Concessionaire is required to provide the Performance Security within 30 days of signing of this Agreement;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits specified in Part-I of Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

Consist of four/Six lane Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana in the State of Punjab on Hybrid Annuity Mode : Package-3 (Design Ch. 66.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km)

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PUBLIC PRIVATE PARTNERSHIP IN HYBRID ANNUITY PROJECTS

- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
- (g) delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfill each parties' Conditions Precedent is an independent obligation of the respective Party.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, **subject to the maximum limit equal to the amount of 1% of the Estimated Project Cost as mentioned in the RFP** and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.3.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent. Provided, however, that the

Construction of Four/Six lane Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana in the State of Punjab on Hybrid Annuity Mode : Package 3 (Design Ch. 06.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km)



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PUBLIC PRIVATE PARTNERSHIP IN HYBRID ANNUITY PROJECTS

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - (c) perform and fulfill its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) upon written request from the Authority, make reasonable efforts to facilitate the acquisition of land and procuring of environmental and forest clearances required for the purposes of the Agreement;
 - (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (g) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;



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PUBLIC PRIVATE PARTNERSHIP IN HYBRID ANNUITY PROJECTS

- (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (i) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions of this Agreement.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire and shall respond to the request for consent no later than 30 days from the receipt of such request from the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). Further, it is clarified that in case both the Authority and Lenders' Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and

Construction of Four Lane Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass, under Bharatmala Pariyojana in the State of Punjab on Hybrid Annuity Mode : Package-3 (Design Ch. 00.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.20 Km)



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effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the EPC Contractor and an O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously and no later than 30 days from the date of receipt of the proposal alongwith the draft agreement by the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof

Construction of Four/Six lane Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana in the State of Punjab on Hybrid Annuity Mode - Package 3 (Design Ch. 66.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km)

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shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (i) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function

5.6 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.

5.7 Branding of Project

Construction of Four/Six lane Greenfield Ludhiana – Rupnagar National Highway no. NH-205K from junction with NE-5 village near Manawal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana in the State of Punjab on Hybrid Annuity Mode : Package 3 (Design Ch. 66.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km)

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The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of Ludhiana – Rupnagar section of NH 205K.

5.8 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.



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Rajesh Kumar

From: Rajesh Kumar
Sent: Tuesday, August 13, 2024 5:24 PM
To: 'judicial-ngt@gov.in'
Cc: 'secy.te@punjab.gov.in'; 'jam@nhai.org'; 'chairman@nhai.org'; 'secy-moef@nic.in'; 'info@ceigall.com'; 'piuchd@gmail.com'; 'chandigarh@nhai.org'; Madhu Sweta
Subject: RE: In the matter of Balwinder Kaur Vs State of Punjab & Ors, OA no. 40/2024, before Hon'ble NGT - reg. Filing of Application & Reply behalf of the R-3/NHAI
Attachments: Reply on behalf of NHAI.pdf; Application for delay in filing Reply.pdf

Dear Sir,

Please find attached the following pleadings on behalf of the Respondent No.3/NHAI, being filed in the subject matter-

- Application seeking condonation of delay in filing the Reply on behalf of Respondent No.3/NHAI
- Reply on behalf of Respondent No.3/NHAI to the Joint Committee Report dated 20.05.2024

Best Regards,

Rajesh | Executive Assistant



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